

Texas Sunset Commission Legislation

Sec. 325.001. SHORT TITLE. This chapter may be cited as the Texas Sunset Act.

Sec. 325.002. DEFINITIONS.

In this chapter:

- (1) "State agency" means an agency expressly made subject to this chapter.
 - (A) Redesignated by Acts 1987, 70th Leg., ch. 1008, Sec. 1.
 - (B) Deleted by Acts 1987, 70th Leg., ch. 1008, Sec. 2.
 - (C) Deleted by Acts 1989, 71st Leg., ch. 196, Sec. 1.
- (2) "Advisory committee" means a committee, council, commission, or other entity created under state law whose primary function is to advise a state agency.
- (3) "Commission" means the Sunset Advisory Commission.

Sec. 325.003. SUNSET ADVISORY COMMISSION.

- (a) The Sunset Advisory Commission consists of five members of the senate and one public member appointed by the lieutenant governor and five members of the house of representatives and one public member appointed by the speaker of the house. The lieutenant governor and the speaker of the house may serve as one of the legislative appointees.
- (b) An individual is not eligible for appointment as a public member if the individual or the individual's spouse is:
 - (1) regulated by a state agency that the commission will review during the term for which the individual would serve;
 - (2) employed by, participates in the management of, or directly or indirectly has more than a 10 percent interest in a business entity or other organization regulated by a state agency the commission will review during the term for which the individual would serve; or
 - (3) required to register as a lobbyist under Chapter 305 because of the person's activities for compensation on behalf of a profession or entity related to the operation of an agency under review.
- (c) It is a ground for removal of a public member from the commission if the member does not have the qualifications required by Subsection (b) for appointment to the commission at the time of appointment or does not maintain the qualifications while serving on the commission. The validity of the commission's action is not affected by the fact that it was taken when a ground for removal of a public member from the commission existed.
- (d) Legislative members serve four-year terms, with terms staggered so that the terms of as near to one-half of the legislative members appointed by the lieutenant governor as possible and the terms of as near to one-half of the legislative members appointed by the speaker as possible expire September 1 of each odd-numbered year. If the lieutenant governor or the speaker serves on the commission, service continues until resignation from the commission or until the individual ceases to hold the office. Public members serve two-year terms expiring September 1 of each odd-numbered year.
- (e) Members other than the lieutenant governor and the speaker are subject to the following restrictions:
 - (1) after an individual serves six years on the commission, the individual is not eligible for appointment to another term or part of a term;
 - (2) a legislative member who serves a full term may not be appointed to an immediately succeeding term; and

(3) a public member may not serve more than two consecutive terms, and, for purposes of this prohibition, a member is considered to have served a term only if the member has served more than half of the term.

(f) The lieutenant governor and speaker shall make their appointments before September 1 of each odd-numbered year.

(g) If a legislative member ceases to be a member of the house from which he was appointed, the member vacates his membership on the commission.

(h) If a vacancy occurs, the appropriate appointing authority shall appoint a person to serve for the remainder of the unexpired term in the same manner as the original appointment.

(i) The commission shall have a chairman and vice-chairman as presiding officers. The chairmanship and vice-chairmanship must alternate every two years between the two membership groups appointed by the lieutenant governor and the speaker. The chairman and vice-chairman may not be from the same membership group. The lieutenant governor shall designate a presiding officer from his appointed membership group and the speaker shall designate the other presiding officer from his appointed membership group.

(j) Seven members of the commission constitute a quorum. A final action or recommendation may not be made unless approved by a record vote of a majority of members appointed by the lieutenant governor and the speaker of the house. All other actions by the commission shall be decided by a majority of the members present and voting.

(k) Each member of the commission is entitled to reimbursement for actual and necessary expenses incurred in performing commission duties. Each legislative member is entitled to reimbursement from the appropriate fund of the member's respective house. Each public member is entitled to reimbursement from funds appropriated to the commission.

Sec. 325.004. STAFF.

(a) The commission shall employ an executive director to act as the executive head of the commission.

(b) The executive director shall employ persons necessary to carry out this chapter through funds made available by the legislature.

(c) The chairman and vice-chairman of the commission may each employ a staff to work for them on matters related to commission activities.

Sec. 325.005. RULES.

The commission shall adopt rules necessary to carry out this chapter.

Sec. 325.007. AGENCY REPORT TO COMMISSION.

Before September 1 of the odd-numbered year before the year in which a state agency subject to this chapter is abolished, the agency shall report to the commission:

- (1) information regarding the application to the agency of the criteria in Section 325.011; and
- (2) any other information that the agency considers appropriate or that is requested by the commission.

Sec. 325.008. COMMISSION DUTIES.

(a) Before January 1 of the year in which a state agency subject to this chapter and its advisory committees are abolished, the commission shall:

- (1) review and take action necessary to verify the reports submitted by the agency under Section 325.007;

- (2) consult the Legislative Budget Board, the Governor's Budget, Policy, and Planning Division, the State Auditor, and the comptroller of public accounts, or their successors, on the application to the agency of the criteria provided in Section 325.011;
 - (3) conduct a review of the agency based on the criteria provided in Section 325.011 and prepare a written report; and
 - (4) review the implementation of commission recommendations contained in the reports presented to the legislature during the preceding legislative session and the resulting legislation.
- (b) The written report prepared by the commission under Subsection (a)(3) is a public record.
- (c) Work performed under this section by the state auditor is subject to approval by the legislative audit committee for inclusion in the audit plan under Section 321.013(c).

Sec. 325.009. PUBLIC HEARINGS.

- (a) Before February 1 of the year a state agency subject to this chapter and its advisory committees are abolished, the commission shall conduct public hearings concerning but not limited to the application to the agency of the criteria provided in Section 325.011.
- (b) The commission may hold the public hearings after the review of the agency required by Section 325.008(a)(3) is complete and available to the public.

Sec. 325.010. COMMISSION REPORT.

- (a) At each regular legislative session, the commission shall present to the legislature and the governor a report on the agencies and advisory committees reviewed.
- (b) In the report the commission shall include:
- (1) its findings regarding the criteria prescribed by Section 325.011;
 - (2) its recommendations based on the matters prescribed by Section 325.012; and
 - (3) other information the commission considers necessary for a complete review of the agency.

Sec. 325.011. CRITERIA FOR REVIEW.

The commission and its staff shall consider the following criteria in determining whether a public need exists for the continuation of a state agency or its advisory committees or for the performance of the functions of the agency or its advisory committees:

- (1) the efficiency and effectiveness with which the agency or the advisory committee operates;
- (2)
 - (A) an identification of the mission, goals, and objectives intended for the agency or advisory committee and of the problem or need that the agency or advisory committee was intended to address; and
 - (B) the extent to which the mission, goals, and objectives have been achieved and the problem or need has been addressed;
- (3)
 - (A) an identification of any activities of the agency in addition to those granted by statute and of the authority for those activities; and
 - (B) the extent to which those activities are needed;
- (4) an assessment of authority of the agency relating to fees, inspections, enforcement, and penalties;
- (5) whether less restrictive or alternative methods of performing any function that the agency performs could adequately protect or provide service to the public;

- (6) the extent to which the jurisdiction of the agency and the programs administered by the agency overlap or duplicate those of other agencies, the extent to which the agency coordinates with those agencies, and the extent to which the programs administered by the agency can be consolidated with the programs of other state agencies;
- (7) the promptness and effectiveness with which the agency addresses complaints concerning entities or other persons affected by the agency, including an assessment of the agency's administrative hearings process;
- (8) an assessment of the agency's rulemaking process and the extent to which the agency has encouraged participation by the public in making its rules and decisions and the extent to which the public participation has resulted in rules that benefit the public;
- (9) the extent to which the agency has complied with:
 - (A) federal and state laws and applicable rules regarding equality of employment opportunity and the rights and privacy of individuals; and
 - (B) state law and applicable rules of any state agency regarding purchasing guidelines and programs for historically underutilized businesses;
- (10) the extent to which the agency issues and enforces rules relating to potential conflicts of interest of its employees;
- (11) the extent to which the agency complies with Chapters 551 and 552 and follows records management practices that enable the agency to respond efficiently to requests for public information; and
- (12) the effect of federal intervention or loss of federal funds if the agency is abolished.

Sec. 325.012. RECOMMENDATIONS.

- (a) In its report on a state agency, the commission shall:
 - (1) make recommendations on the abolition, continuation, or reorganization of each affected state agency and its advisory committees and on the need for the performance of the functions of the agency and its advisory committees;
 - (2) make recommendations on the consolidation, transfer, or reorganization of programs within state agencies not under review when the programs duplicate functions performed in agencies under review; and
 - (3) make recommendations to improve the operations of the agency, its policy body, and its advisory committees, including management recommendations that do not require a change in the agency's enabling statute.
- (b) The commission shall include the estimated fiscal impact of its recommendations and may recommend appropriation levels for certain programs to improve the operations of the state agency, to be forwarded to the Legislative Budget Board.
- (c) The commission shall have drafts of legislation prepared to carry out the commission's recommendations under this section.
- (d) After the legislature acts on the report under Section 325.010, the commission shall present to the state auditor the commission's recommendations that do not require a statutory change to be put into effect. Based on a risk assessment and subject to the legislative audit committee's approval of including the examination in the audit plan under Section 321.013, the state auditor may examine the recommendations and include as part of the next approved audit of the agency a report on whether the agency has implemented the recommendations and, if so, in what manner.

Sec. 325.0125. REVIEW OF CERTAIN AGENCIES.

- (a) In the two-year period preceding the date scheduled for the abolition of a state agency under this chapter, the commission may exempt certain agencies from the requirements of this chapter relating to staff reports, hearings, and reviews.
- (b) The commission may only exempt agencies that have been inactive for a period of two years preceding the date the agency is scheduled for abolition or that have been rendered inactive by an action of the legislature.
- (c) The commission's action in exempting agencies under this section must be done by an affirmative record vote and must be decided by a majority of all members present and voting.

Sec. 325.0126. MONITORING OF RECOMMENDATIONS.

During each legislative session, the staff of the commission shall monitor legislation affecting agencies that have undergone sunset review and shall periodically report to the members of the commission on proposed changes which would modify prior recommendations of the commission.

Sec. 325.013. ABOLITION OF ADVISORY COMMITTEES.

An advisory committee, the primary function of which is to advise a particular state agency, is abolished on the date set for abolition of the agency unless the advisory committee is expressly continued by law.

Sec. 325.015. CONTINUATION BY LAW.

- (a) During the regular session immediately before the abolition of a state agency or an advisory committee that is subject to this chapter, the legislature by law may continue the agency or advisory committee for a period not to exceed 12 years.
- (b) This chapter does not prohibit the legislature from:
 - (1) terminating a state agency or advisory committee subject to this chapter at a date earlier than that provided in this chapter; or
 - (2) considering any other legislation relative to a state agency or advisory committee subject to this chapter.

Sec. 325.017. PROCEDURE AFTER TERMINATION.

- (a) A state agency that is abolished in an odd-numbered year may continue in existence until September 1 of the following year to conclude its business. Unless the law provides otherwise, abolishment does not reduce or otherwise limit the powers and authority of the state agency during the concluding year. A state agency is terminated and shall cease all activities at the expiration of the one-year period. Unless the law provides otherwise, all rules that have been adopted by the state agency expire at the expiration of the one-year period.
- (b) Any unobligated and unexpended appropriations of an abolished agency or advisory committee lapse on September 1 of the even-numbered year after abolishment.
- (c) Except as provided by Subsection (f) or as otherwise provided by law, all money in a dedicated fund of an abolished state agency or advisory committee on September 1 of the even-numbered year after abolishment is transferred to the General Revenue Fund. The part of the law dedicating the money to a specific fund of an abolished agency becomes void on September 1 of the even-numbered year after abolishment.

(d) Unless the law or a rider in the General Appropriations Act provides otherwise, an abolished state agency or advisory committee funded in the General Appropriations Act for both years of the biennium may not spend or obligate any of the money appropriated to it for the second year of the biennium.

(e) Unless the governor designates an appropriate state agency as prescribed by Subsection (f), property and records in the custody of an abolished state agency or advisory committee on September 1 of the even-numbered year after abolishment shall be transferred to the comptroller. If the governor designates an appropriate state agency, the property and records shall be transferred to the designated state agency.

(f) The legislature recognizes the state's continuing obligation to pay bonded indebtedness and all other obligations, including lease, contract, and other written obligations, incurred by a state agency abolished under this chapter, and this chapter does not impair or impede the payment of bonded indebtedness and all other obligations, including lease, contract, and other written obligations, in accordance with their terms. If an abolished state agency has outstanding bonded indebtedness or other outstanding obligations, including lease, contract, and other written obligations, the bonds and all other obligations, including lease, contract, and other written obligations, remain valid and enforceable in accordance with their terms and subject to all applicable terms and conditions of the laws and proceedings authorizing the bonds and all other obligations, including lease, contract, and other written obligations. The governor shall designate an appropriate state agency that shall continue to carry out all covenants contained in the bonds and in all other obligations, including lease, contract, and other written obligations, and the proceedings authorizing them, including the issuance of bonds, and the performance of all other obligations, including lease, contract, and other written obligations, to complete the construction of projects or the performance of other obligations, including lease, contract, and other written obligations. The designated state agency shall provide payment from the sources of payment of the bonds in accordance with the terms of the bonds and shall provide payment from the sources of payment of all other obligations, including lease, contract, and other written obligations, in accordance with their terms, whether from taxes, revenues, or otherwise, until the bonds and interest on the bonds are paid in full and all other obligations, including lease, contract, and other written obligations, are performed and paid in full. If the proceedings so provide, all funds established by laws or proceedings authorizing the bonds or authorizing other obligations, including lease, contract, and other written obligations, shall remain with the comptroller or the previously designated trustees. If the proceedings do not provide that the funds remain with the comptroller or the previously designated trustees, the funds shall be transferred to the designated state agency.

Sec. 325.018. SUBPOENA POWER.

(a) The commission may issue process to compel the attendance of witnesses and the production of books, records, papers, and other objects necessary or proper for the purposes of the commission proceedings. The process may be served on a witness at any place in this state.

(b) If a majority of the commission directs the issuance of a subpoena, the chairman shall issue the subpoena in the name of the commission.

(c) If the chairman is absent, the chairman's designee may issue a subpoena or other process in the same manner as the chairman.

(d) If necessary to obtain compliance with a subpoena or other process, the commission may issue attachments. The attachments may be addressed to and served by any peace officer in this state.

(e) Testimony taken under subpoena must be reduced to writing and given under oath subject to the penalties of perjury.

(f) A witness who attends a commission proceeding under process is entitled to the same mileage and per diem as a witness who appears before a grand jury in this state.

Sec. 325.019. ASSISTANCE OF AND ACCESS TO STATE AGENCIES.

- (a) The commission may request the assistance of state agencies and officers. When assistance is requested, a state agency or officer shall assist the commission.
- (b) In carrying out its functions under this chapter, the commission or its designated staff member may inspect the records, documents, and files of any state agency.

Sec. 325.0195. RECORDS PROTECTED FROM DISCLOSURE.

- (a) A working paper, including all documentary or other information, prepared or maintained by the commission staff in performing its duties under this chapter or other law to conduct an evaluation and prepare a report is excepted from the public disclosure requirements of Section 552.021.
- (b) A record held by another entity that is considered to be confidential by law and that the commission receives in connection with the performance of the commission's functions under this chapter or another law remains confidential and is excepted from the public disclosure requirements of Section 552.021.

Sec. 325.020. RELOCATION OF EMPLOYEES.

If an employee is displaced because a state agency or its advisory committee is abolished, reorganized, or continued, the state agency and the Texas Workforce Commission shall make a reasonable effort to relocate the displaced employee.

Sec. 325.021. SAVING PROVISION.

Except as otherwise expressly provided, abolition of a state agency does not affect rights and duties that matured, penalties that were incurred, civil or criminal liabilities that arose, or proceedings that were begun before the effective date of the abolition.

Sec. 325.022. REVIEW OF PROPOSED LEGISLATION CREATING AN AGENCY.

- (a) Each bill filed in a house of the legislature that would create a new state agency or a new advisory committee to a state agency shall be reviewed by the commission.
- (b) The commission shall review the bill to determine if:
 - (1) the proposed functions of the agency or committee could be administered by one or more existing state agencies or advisory committees;
 - (2) the form of regulation, if any, proposed by the bill is the least restrictive form of regulation that will adequately protect the public;
 - (3) the bill provides for adequate public input regarding any regulatory function proposed by the bill; and
 - (4) the bill provides for adequate protection against conflicts of interest within the agency or committee.
- (c) On request, the commission shall forward a written comment on the legislation to the author of the bill and to the presiding officer of the committee to which the bill is referred.

Sec. 325.024. GIFTS AND GRANTS.

- (a) The commission may accept gifts, grants, and donations from any organization described in Section 501(c)(3) of the Internal Revenue Code for the purpose of funding any activity under this chapter.
- (b) All gifts, grants, and donations must be accepted in an open meeting by a majority of the voting members of the commission and reported in the public record of the commission with the name of the donor and purpose of the gift, grant, or donation.